



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLICATION NO. 150 OF 1998

REPUBLIC.....APPLICANT

VERSUS

THE LAND DISPUTES TRIBUNAL,

NUU DIVISION, MWINGI DISTRICT.....RESPONDENT

AND

WAMBUA MUTUI.....1ST INTERESTED PARTY

DANIEL SUA KIOKO.....2ND INTERESTED PARTY

AND

DAVID KALII MUNYAO.....EX-PARTE APPLICANT

RULING

1. In the Notice of Motion dated 10th December, 2018 and filed on the same date, the Ex-parte Applicant has prayed for the following orders:

a) That the Ex parte Applicant be granted leave of the court to file the Notice of Appeal out of time and or the time for filing a Notice of Appeal be extended.

b) That costs be in the cause.

2. The Application is supported by the Affidavit of the Ex-parte Applicant who has deponed that he is 92 years old and lives in Nuu Division, Mwingi East in Kitui County; that he does not have a mobile phone and that ordinarily, he used to communicate with his former advocate through his son who works and lives in Japan.

3. The Ex parte Applicant deponed that on 20th November, 2018, he received communication from his son that his case had been dismissed on 28th September, 2018; that his son obtained the information about the dismissal of the case the previous day and that his son had been trying to get in touch with him without success.

4. The Ex-parte Applicant finally deponed that he discussed with his son and resolved to lodge an Appeal against the decision of this court; that it was also agreed that he instructs another advocate in the matter; that he collected his file from his previous advocate on 22nd November, 2018 and that the delay in filing the Notice of Appeal was occasioned by the lack of communication from his previous advocate and his incapacitation due to old age. Although the Application was served on the Interested Parties' advocate, he did not file a response.

5. The record shows that when the Judgment of this court was read in open court on 28th September, 2018, the Ex-parte Applicant's advocate was in court. Indeed, the Ex parte Applicant has admitted in his Affidavit that his advocate informed his son who is based in Japan, about the decision of this court immediately the Judgment was delivered, and that his son informed him about the decision on 20th November, 2018.

6. The Ex-parte advocate deponed that the late filing of the Appeal was due to the fact that he does not have a mobile phone, and that he always communicates with his advocate through his son who is based in Japan. However, he did not inform the court how he usually communicates with his son, if indeed he does not have a phone.

7. In any event, the Ex-parte Applicant must have been informed by his advocate the date when the Judgment was to be delivered, either directly or through his son. It was therefore upon him to call his advocate and inquire about the decision of the court, and instruct his advocate accordingly on the filing of the Notice of Appeal. It matters not whether he had a phone or not.

8. Considering that the Applicant was represented by an advocate on the day the court pronounced its Judgment, and the said Judgment having been communicated by the said advocate to the Ex-parte Applicant's son the following day, I find that no good reason has been given by the Ex-parte Applicant why he did not file the Notice of Appeal within fourteen (14) days.

9. For those reasons, I dismiss the Application dated 10th December, 2018 but with no order as costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12TH DAY OF JUNE, 2020.

O.A. ANGOTE

JUDGE